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Tax Practitioners Board
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Tax Agent Services (Code of Professional Conduct) Determination 2024 - TPB Guidance

CPA Australia is Australia's leading professional accounting body and one of the largest in the world. We represent the diverse interests of more than 173,000 members working in over 100 jurisdictions and regions around the world. CPA Australia has over 30,000 members in public practice in Australia, serving our communities as trusted advisers who provide business advisory, tax, financial planning, reporting, auditing/assurance and insolvency-related services.

CPA Australia actively supports robust ethical requirements being imposed on the Australian tax profession - requirements that should be enforced by a well-funded regulator. We acknowledge the collaboration between the Assistant Treasurer's office, Treasury and the professional bodies in developing the *Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 2) Determination 2024* such that the *Tax Agent Services (Code of Professional Conduct) Determination 2024* (the Determination) should not impose significant compliance burdens on most small tax practitioners.

Similarly, we acknowledge the same collaborative approach taken by the Tax Practitioners Board (TPB) as the guidance is developed around the Determination.

Overall, we note and welcome references to the Accounting Professional & Ethical Standards Board (APESB) Standards (APESB Standards). The consistency provides certainty to tax practitioners who are already working within these Standards.

The six draft Information Sheets issued by the TPB on 24 October 2024 (TPB Guidance), the subject of this submission, largely addresses key issues, however some matters still require clarity or further clarity. Our comments the TPB Guidance are set out in the Attachment. We ahev addressed each Information Sheet individually, noting that further consistency across the TPB guidance is required.

If you have any queries please contact Neville Birthisel, Advisor - Regulation and Standards, at neville.birthisel@cpaaustralia.com.au.

Yours sincerely

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ATTACHMENT

TPB(I) D56/2024 Upholding and promoting the ethical standards of the tax profession (s10)

Broad comments on the draft information sheet

1. The acknowledgement in paragraph 21 that most sole practitioner tax advisers 'will be well advanced in complying with paragraph 10(a) of the Determination by merely complying with the Code' provides a degree of certainty for practitioners, which we would expect extends to all tax practitioners who are complying with the Code. This should be made explicit.
2. The acknowledgement in paragraph 23 that 'considered feedback or submissions, which may include criticism, on public consultation documents that is done professionally is not considered conduct in breach of paragraph 10(b) of the Determination' provides much needed certainty for those contributing to future consultations, although we would expect that this also extends to all formal consultations. Clarity is required here.

Consultation Questions

1. Do you have any general comments regarding the guidance on the obligation to uphold and promote the ethical standards of the tax profession under section 10 of the Determination?

We acknowledge the importance of upholding and promoting the ethical standards of the tax profession.

In the face of recent publicity to the contrary, we welcome the TPB's comment that many tax practitioners will already be complying with section 10 'by merely complying with the Code'.

Additionally, the references to the APESB Standards provides certainty to tax practitioners who are already complying with those Standards.

2. In relation to paragraph 20 which provides a non-exhaustive list of practical measures that should be implemented in a tax practice, are these measures adequate and appropriate? If not, please provide further details, including any additional measures that should be included.

It is important that the measures set out in paragraph 20 are consistent with existing obligations and guidance, such as breach reporting (TPB(I) D53/2024), disqualified entities (TPB(I) 41/2024), and proof of identity requirements for client verification (TPB(PN) 5/2022).

If the measures go beyond those already existing, the obligations from which they are drawn should be reviewed with appropriate public consultation.

Similar to the requirement at subsection 10(a) of the Determination, APESB Standard *APES 110* Code of Ethics for Professional Accountants (including Independence Standards) (APES 110) provides guidance on ethical behaviour and maintaining professional competence. Paragraph 120.13 of Apes 110 addresses organisational culture, noting that:

> *The promotion of an ethical culture within an organisation is most effective when:*
>
> - *leaders and those in managerial roles promote the importance of, and hold themselves and others accountable for demonstrating, the ethical values of the organisation;*
> - *appropriate education and training programs, management processes, and performance evaluation and reward criteria that promote an ethical culture are in place;*
> - *effective policies and procedures are in place to encourage and protect those who report actual or suspected illegal or unethical behaviour, including whistleblowers; and*

- *the organisation adheres to ethical values in its dealings with third parties.*

Paragraph 20 of the draft guidance should acknowledge and make reference to these already existing APES obligations.

Additionally, bullet point 4 of the draft guidance would appear to be referring to whistleblower protections. The guidance should clarify what is meant at this bullet point. We recommend reference is made to the extension of the whistleblower regime as a consequence *Treasury Laws Amendment (Tax Accountability and Fairness) Act 2024* and guidance provided in APES 110 at R360.21 – 360.21 A2

3. ***In relation paragraph 29 which provides non-exhaustive examples of breaches of section 10 of the Determination, are there any additional examples that should be included which demonstrate a failure to uphold and promote the ethical standards of the tax profession? Please provide further details.***

   We consider that the list of examples is adequate.

4. ***Are there any additional case study scenarios that would assist registered tax practitioners in understanding how the obligations under section 10 of the Determination apply practically? If so, what types of scenarios should be addressed?***

   We consider the case studies provided is adequate.

TPB(I) D57/2024 False or misleading statements (s15)

Broad comments on the draft information sheet

Focus of Section 15

The greater part of section 15 addresses a situation where:

- whether it be as a result of a failure to take reasonable care, recklessness as to the operation of a taxation law, or intentional disregard of a taxation law, the client has made, or has had made on their behalf, a statement which at a later time is believed to be **false or misleading in a material particular**; and
- the client fails to amend the statement or have the statement amended.

Section 15 then prescribes the action the tax practitioner must take in these circumstances.

The scenario where it is the tax practitioner who has made, or has had made on their behalf, a statement which at a later time is believed to be false or misleading in a material particular, is the secondary focus of the section and relates only to Item 1 of the table. However, the primary focus of the draft guidance appears to be the situation anticipated in Item 1. Five of the six case studies relate to the actions of the tax practitioner, rather than those of the client.

The case studies and the guidance itself should address the main focus of section 15 and include situations where it is the client that is the bad actor and address the actions the honest tax practitioner must take to address the bad behaviour.

Paragraph 42

This paragraph implies that tax practitioners are not currently accountable, with which we strongly disagree. The statement is unevidenced, irrelevant to the interpretation of the Determination and in itself *undermine[s] public trust and confidence in the integrity of the tax profession*[1]**.** As such it should be removed entirely.

Consultation Questions

1. ***Are there additional types of statements routinely made or prepared by registered tax practitioners (or under the direction of registered tax practitioners), that should be specifically addressed by the guidance (including case studies)?***

   We consider that the guidance addresses the relevant statements routinely made or prepared by registered tax practitioners.

2. ***Are there additional examples of further action in the public interest that tax practitioners should take in certain circumstances (paragraph 73)?***

   We consider that the examples in paragraph 73 are sufficient.

3. ***Are there additional examples of risks to the personal safety of registered tax practitioners, their family members or at-risk staff members that should be listed at paragraph 123?***

   While we consider that the examples in paragraph 123 are sufficient, the draft guidance would benefit from the inclusion of commentary exploring options and support available to a tax practitioner faced with an unreasonable risk to personal safety.

4. ***Are there additional case study scenarios that would assist registered tax practitioners in understanding how the obligations apply practically? If so, what types of scenarios should be addressed?***

[1] s10(2)(b) of the Determination

Please refer to "have the statement corrected" in consultation question 5.

Additionally, case studies exploring the exceptions to the obligations to 'withdraw' or 'notify' would benefit users. In the case of the 'personal safety' exception the guidance could explore what other options and support are available to a tax practitioner faced with an unreasonable risk to personal safety.

Withdrawal and/or notification

We note that the only case study that explores the circumstances surrounding a client's actions is case study 6. However, that case study fails to address any obligation 'Don' may have under Item 2(b) to advise 'Phil' of possible withdrawal or notification.

To make it clear that the obligation to potentially withdraw from the engagement or report the client's activities to the Board or the Commissioner has been communicated adequately to Phil, the case study could include the following sentence to address this issue:

> *As Don's engagement letters with Phil and Phil's company spell out Don's possible withdrawal from the engagement and notification of the Board or Commissioner in the appropriate circumstances, Don has satisfied his obligations under Item 2(b) regarding these two possible consequences.*

Client Movement/Ethical Letters

A case study exploring the movement of clients between tax practitioners and the interaction with section 15 and subsection 30-10(6) of the *Tax Agent Services Act 2009* (TASA) would be of value. We suggest the following:

Jack is a tax practitioner who has withdrawn from a client engagement in accordance with his obligations under Item 3 of the table in section 15, however Jack does not believe the tax position his client insists on (with which he disagrees) causes 'substantial harm' and therefore does not have a legal duty to notify under Item 4.

Subsequently Jack receives an ethical letter from another tax practitioner who has been approached by Jack's former client to provide taxation services.

Jack reaches out to his previous client seeking the client's consent to respond to the ethical letter. However, his previous client declines to give Jack the consent he is seeking. As a result, Jack is prohibited by subsection 30-10(6) of the TASA from disclosing to the other tax practitioner the reason for his withdrawal of services.

The case study could then explore the options open to Jack, the options open to the other tax practitioner, and the potential interplay with section 2-5 of the TASA, section 10 of the Determination, as well as breach reporting.

We note that APES 110 provides guidance regarding declining or ceasing an engagement but is only compulsory for members of the "professional accounting bodies", as defined in the *Australian Securities and Investments Commission Regulations 2001* reg 2AC.

5. ***Are there additional practical considerations for registered tax practitioners relevant to the obligations in section 15 of the Determination that should be addressed in the guidance?***

Have the statement corrected

Item 1 of the table to section 15 of the Determination requires that:

> *Where you made the statement or permitted or directed someone else to make the statement (other than a statement made for a client), have the statement corrected.*

The statement must have been false or misleading in a material particular and resulted from, at least, a failure to take reasonable care. This is supported by Item 1 of both Table 1 and Table 3 in the draft guidance.

However, where the statement relates to an assessment, and assuming that the taxpayer is an individual or small business and the false or misleading statement does not arise as a result of fraud or evasion, section 170 of the *Income Tax Assessment Act 1936* generally imposes a 2-year or 4-year time limit on the ability of the taxpayer to make an amendment.

This being the case, the guidance should clarify how a taxpayer can satisfy subsection 15(2) of the Determination where they are out of time under section 170 of the *Income Tax Assessment Act 1936*.

TPB(I) D58/2024 Managing conflicts of interest when undertaking activities for government and maintaining confidentiality in dealings with government (s20 & 25)

Consultation Questions

1. ***Do you have any general comments regarding the guidance on the obligation under section 20 of the Determination?***

Where a tax practitioner's obligation to disclose a conflict of interest in relation to any activities they undertake for an Australian government agency in a professional capacity starts and finishes needs to be more clearly spelt out, as the proposed guidance is open to wide interpretation.

Paragraph 38 states in part:

> *It extends to **any** material conflict of interest that they are aware of that arises in connection with **any** activity undertaken for the agency (whether the same or different activity) or in relation to **any** activity undertaken for another government agency. This may include any conflict of interest of any employee, associate, **contractor** or other relevant entity.*

This could be very broadly interpreted and could be taken to mean that the 'employee, associate, contractor or other relevant entity' need only be currently or previously engaged by the same government agency as the tax practitioner (but with no relationship to the tax practitioner), for the section 20 obligations to apply. This would appear to be supported by paragraph 39 which states in part:

> *where a registered tax practitioner ... knows of another person's or entity's conflict of interest in undertaking the same or a different activity for that agency ... the registered tax practitioner [must] ... disclose the details of that conflict of interest to the agency.*

Under this interpretation:

- were an electrical contractor to be engaged by a government agency for an activity in 2020; and subsequently
- a tax practitioner is engaged by the same government agency, but on a different activity, in 2025, and
- the tax practitioner identified that the contractor had a conflict of interest;

the tax practitioner would seem to have a reporting obligation under section 20.

This is an unnecessarily broad, unpractical and incorrect interpretation of section 20, which states:

> *... **you must**: (a) take reasonable steps to identify and document any material conflicts of interest (real or apparent) **you have** in connection with the activity*

Subsections (b) and (c) with reference to paragraph (a) then clarify that the tax practitioner must disclose and mitigate any conflicts of interest they have. Section 20 is addressing conflicts of interest of the tax practitioner, their employee, associate, contractor or other relevant entity. It does not extend to conflicts of interest by unrelated third parties of which the tax practitioner may become aware.

Identifying and reporting conflicts of interest by parties with whom the tax practitioner has no direct connection and over whom the tax practitioner has no control places a significant and unfair burden on the tax practitioner.

'Contractors or other relevant entities' may not be tax practitioners, may have never heard of breach reporting, the TASA, or conflicts of interest, but may have a conflict of interest while working on a government project. Reliance upon the understanding of a potential conflict of interest by someone

who does not have a TASA obligation, is impractical and, under the above interpretation, inappropriately places significant administrative burden and potential risk on the tax practitioner. It would be more appropriate for the Government to develop a standard conflict of interest checklist to be completed by **all** entities contracting directly or indirectly with a government agency. This ensures consistency and removes the need to consider 'material conflict', a subjective test, as the checklist should capture all conflicts (real or apparent).

2. ***Are the factors outlined at paragraph 36 in relation to whether a registered tax practitioner has taken reasonable steps to identify and document any material conflict of interest adequate and appropriate? If no, please provide further detail including any additional factors that should be included.***

   The 'relevant factors' described in paragraph 36 place additional administrative burden on the tax practitioner, particularly smaller practitioners. Therefore, we welcome commentary as to the benefits adhering to these factors will have in terms of allocation of compliance resources, penalties and sanctions.

   Additionally, we note an inconsistency between the Explanatory Statement accompanying the Determination and paragraphs 22 and 36 of the guidance. The Explanatory Statement states that a tax practitioner's obligations under section 20 do not 'extend to activities or interactions of a personal nature.' However, paragraph 22 of the draft guidance includes the personal interests of the tax practitioner in the definition of 'conflict of interest'. This is further confused by paragraph 36 which does not include personal interests or investments of the tax practitioner as factors to be considered when identifying a conflict of interest.

   The proposed guidance needs to clarify this point.

3. ***Are the steps and techniques outlined at paragraphs 53 and 54 in relation to reasonable steps to manage, mitigate, and where appropriate and possible, avoid, any material conflict of interest adequate and appropriate? If no, please provide further detail including any additional steps or techniques that should be included.***

   The steps and techniques outlined at paragraphs 53 and 54 are comprehensive and appropriate. But they place additional administrative burden on the tax practitioner, particularly smaller practitioners. Therefore:

   1. We recommend that the steps and techniques be supported by TPB resources, such as training videos, to help tax practitioners educate their staff to better enable them to identify conflicts of interest; and
   2. We renew our call for commentary as to the benefits adhering to these factors will have in terms of allocation of compliance resources, penalties, and sanctions.

4. ***Do you have any general comments regarding the guidance on the obligation under section 25 of the Determination?***

   Employee, associate, contractor or other relevant entity

   The proposed guidance does not specifically discuss disclosure of confidential information to employees, associates, contractors or other relevant entities. This would imply that the obligation not to disclose is absolute on the tax practitioner and the information cannot be shared with anyone unless authorised (express, implied, or otherwise) by the government agency.

   However, what of the situation where disclosure to an employee is authorised but the employee is not a tax practitioner, what obligations does the employee have not to disclose? This should be explored further and supported by case studies.

   Paragraphs 83 – 94

Paragraphs 83 – 94 discuss when it is 'reasonable to conclude' further disclosure of information was authorised by an Australian government agency. The paragraphs provide factors to consider when making the assessment, however paragraph 89 notes that 'ultimately the registered tax practitioner should use their professional judgement'.

'Reasonable to conclude' is problematic, particularly if it is based on undocumented discussions, such as where the further disclosure was implied by the government agency, or where the conclusion is based on 'comments made by the government agency' (para. 88).

For the avoidance of doubt, future disputes and litigation in this area, the TPB should recommend that the onus for determining confidentiality lies with the Australian government agency disclosing the information. Information should only be considered confidential if overtly designated as such by the agency, in writing.

This removes the burden on the tax practitioner to make a judgement around 'reasonable to conclude' and whether a legal obligation exists and gives all parties certainty when dealing with information disclosed by an Australian government agency.

Paragraph 96 should be expanded to include the Australian Federal Police to account for situations where the tax practitioner becomes aware of fraud or mismanagement being perpetrated by the agency itself.

Paragraphs 109-113

Paragraphs 109-113 discuss the circumstances when a registered tax practitioner can use information for personal advantage. The paragraphs provide factors to consider when making the assessment. However, the paragraphs also include the term 'reasonable to conclude'. As discussed above, 'reasonable to conclude' is problematic, particularly if it is based on undocumented discussions, such as where 'the use of the information ... was implied by the government agency, either in writing or otherwise' (para. 113).

Given the subjectiveness of the phrase 'reasonable to conclude', for the avoidance of doubt, future disputes and litigation in this area, the TPB should recommend that the onus for determining confidentiality lies with the Australian government agency disclosing the information. Information should only be considered confidential if overtly designated as such by the agency, in writing.

This removes the burden on the tax practitioner to make a judgement around 'reasonable to conclude' and whether a legal obligation exists and gives all parties certainty when dealing with information disclosed by an Australian government agency.

5. ***Are there additional case study scenarios that would assist registered tax practitioners in understanding how the obligations under section 20 and 25 of the Determination apply practically? If so, what types of scenarios should be addressed?***

As an overall comment, the case studies presented are too straight forward with the tax practitioner acting totally appropriately or totally inappropriately. The outcome should be obvious to any person whether they have an in-depth knowledge of the obligations in the Determination or not.

However, reality will usually be at the fringes, and these are the scenarios that the case studies should explore.

In particular, examples of 'reasonable to conclude' are necessary.

Section 20

Case study 1 and 2

Case study 1 and 2 are examples of scenarios for which the outcome is obvious. As such they do not add to the understanding of tax practitioners reading this draft guidance.

Case study 2, in relation to Max's conflict states 'his only option to avoid the conflict is to decline the engagement.' Our reading is that Max did not actually decline the engagement but was rather setting out his options to Treasury. Therefore, we submit that the sentence would be better to read:

> Further, Max provides The Treasury with an overview of how he intends to manage and mitigate the conflict should the engagement continue, noting that (in the absence of Treasury's agreement to continue the engagement) his only option to avoid the conflict **would be** to decline the engagement.

Case study 3

Case study 3 may be less black and white but given that, 'nonetheless John documents and discloses the conflict to the government agency', the outcome is obvious. The case study would be of more value if John simply self-assessed without the disclosure to the government agency. The case study could then explore what factors then TPB would consider were it to review John's self-assessment, a scenario where the TPB accepts John's assessment, a scenario where it does not, and why.

Additionally, the case study should specifically draw out the basis on which John determines that the conflict is not material. What steps did John take in coming to that conclusion?

Section 25

Employee, associate, contractor or other relevant entity

As discussed above, the case studies should explore the scenario of authorised disclosure of confidential information to employees, associates, contractors or other relevant entity, but where those third parties are not themselves tax practitioners.

In that situation what obligation does that third party (particularly employees) have not to disclose?

Implied

At paragraph 113, the draft guidance notes that authorisation of the further disclosure can be implied by the government agency. A case study/studies should demonstrate this term and the circumstances when implied authorisation is sufficient.

Case study 4

In case study 4, once again the tax practitioner has acted entirely appropriately and therefore a logical and obvious outcome follows. However, the case study should take the opportunity to discuss variations which would perhaps make the outcome less obvious and therefore of more value and clarity to the users of the guidance. For example:

- Was Thomas required to sign a confidentiality agreement?
- Are the two other partners required to sign confidentiality agreements?
- Can Thomas discuss the round table with his spouse, in response to "how was your day"?
- If participation involves travel and nights away, how should Thomas explain to his family and work colleagues not involved in the roundtable?
- What if one of the other two partners inadvertently discloses something about the proposed changes?

- What if Thomas or one of the other partners loses their device which contains notes about the proposed changes?
- What if one of the other partners was not a tax practitioner and therefore not subject to the Determination or breach reporting obligations?
- What if Thomas was coerced as to whom he invited to participate in the engagement?
- What if in explaining the roundtable opportunity to his two partners, he could not help but breach confidentiality?

Case study 5

Case study 5 follows on from case study 4, although this could be stated more overtly.

Again, the case study could be expanded to explore more variations of the scenario, for example:

- 'Any information shared with that core group is to be provided through email only (with a carbon copy (cc) to The Treasury) and not to be provided in printed form'. What if Thomas prints the information for his own use but doesn't share with the other partners?
- 'Thomas is in breach of subsection 30-10(17) of the Code in the TASA'.
  - What are next steps for Treasury?
  - What are next steps for the TPB?
  - Does Thomas have a self-reporting obligation under the breach reporting rules?
  - Do the other two partners have reporting obligations under the breach reporting rules?
  - What penalty could Thomas be facing?
  - Will Thomas face penalties for breaching both subsection 30-10(17) of the Code and subsection 25(1) of the Determination?
  - Are there ramifications for the other two partners and/or Thomas's firm?
  - What if the 'no printing rule' was communicated verbally only at the first meeting before the Core Group was formed?

Case study 6

Unfortunately, this case study is another example of the tax practitioner acting totally inappropriately, resulting in an obvious outcome.

Rather than Isabella making what seems to be intentional unauthorised disclosures, what if the disclosure was inadvertent, for example being contained in a long email thread which was replied to or forwarded?

Assuming Isabella's firm maintains a conflict-of-interest register and Isabella recognises the conflict between the interests of her firm's clients and participating in the confidential consultation, what information can Isabella include in the register without breaching confidentiality?

If the scenario remains as it is, the case study fails to overtly call out the sanctions and penalties Isabella could face.

Case study 7

Continuing from case study 6, case study 7 also needs to call out the sanctions and penalties that Isabella could face.

'In breaching subsection 25(2) of the Determination, Isabella is in breach of subsection 30-10(17) of the TASA.' Will Isabella face penalties for breaching both subsections?

Also, assuming Isabella's firm does maintain a conflict-of-interest register and therefore partners and staff are or should have been aware of the confidential consultation, the case study could explore what breach reporting obligations they have, particularly when they start receiving the unauthorised disclosures.

The case study may also look at what sanctions or penalties, if any, Isabella's firm faces.

Case study 8

Unfortunately, this case study is another example of the tax practitioner acting totally inappropriately, resulting in an obvious outcome.

'In breaching subsection 25(2) of the Determination, Adam is in breach of subsection 30-10(17) of the TASA.' Will Adam face penalties for breaching both subsections? If so, what kind of penalties?

TPB(I) D59/2024 Obligation to keep proper client records of tax agent services provided (s30)

Broad comments on the draft information sheet

Obligation to keep proper client records

The concept that records must be in English, or readily convertible to English is well understood, used throughout taxation legislation and stated throughout the draft guidance. Paragraph 60 of the draft guidance clarifies this requirement, stating '*if the service is provided in Australia, the records should be kept in English*'. This is consistent with subsection 900-115(4) of the *Income Tax Assessment Act 1997*.

However, the qualification at paragraph 60 is not referred to in paragraphs 19, 45 or 56.

As the qualification is mentioned only once in the guidance it could easily be missed. Therefore paragraphs 19, 45 or 56 should state the same qualification as paragraph 60, or alternatively include a cross-reference to paragraph 60.

Additionally, despite the facts of Case study 1 seemingly indicating that it relates to tax services provided in Australia, by an Australian tax practitioner, to an Australian customer, there is no mention of the paragraph 60 qualification. Only the concept that records must be in English, or readily convertible to English is repeated. In isolation, merely repeating the concept without the qualification is misleading.

The case study should be amended to reflect paragraph 60 and subsection 900-115(4).

All advice received from the client

Subsection 30(2)(e) of the Determination requires that client records *must include all advice received from the client*. This requirement is repeated at paragraphs 19, 45, 48 and Case study 1. Paragraph 48 goes further, stating 'in writing and orally'.

Without additional clarification **all advice** received from the client **orally** could be taken to mean a complete transcript or recording of the conversation.

This is moderated somewhat by paragraph 28 which states 'a file note about advice provided verbally', and paragraph 54 which states that 'the TPB does not expect registered tax practitioners to record every detail relating to tax agent service', and that the recordkeeping pertaining to the tax agent service should not be 'overly burdensome'.

However, the guidance fails to call out what is precisely intended by **all advice** received from the client where it is received orally.

Case study 1 should address this shortfall in the guidance.

Consultation Questions

1. ***Are there additional examples of types of records that should be included at paragraph 23?***

   Paragraph 23 comprehensively details the minimum records registered tax practitioners should keep and retain.

   We would submit that clarification around oral advice received from the client should be addressed here, in addition to Case study 1.

2. ***Are the minimum details listed at paragraph 50 appropriate? If not, what should or should not be included and why?***

   Prima-facie, paragraph 50 captures all the minimum details required to explain the tax agent service provided and enable a complete and accurate record of that service.

   However, we would call out the bullet point requiring:

   - *why the service was provided, including details of relevant tax obligations involved*

   Why the service was provided may be evident by what the service involved, and therefore it may be unnecessary to call this out separately. This requirement should be conditional on the services provided. More complex engagements may require this level of detail; however, it would be expected that an engagement to prepare a straightforward individual tax return would not.

3. ***Are there additional relevant record keeping obligations than those listed at paragraphs 86 to 91 that have not been addressed by this TPB(I)?***

   We do not consider that there are additional relevant record keeping obligations than those listed at paragraphs 86 to 91 that have not been addressed by this TPB(I).

4. ***Are there additional case study scenarios that would assist registered tax practitioners in understanding how the obligations apply practically? If so, what types of scenarios should be addressed?***

   In addition to our recommended amendments to Case study 1, noted above, case studies not involving an overt failure to comply, but where record keeping is lax and potentially insufficient would be useful.

   Conversely, a case study whereby the tax practitioner has:

   - a letter of engagement in line with the recommendations in TPB(PN) 3/2019
   - file note and records of client instructions
   - maintained a system of quality management complying with APES 320

   which would be expected to reflect the vast majority of tax practitioners, would be useful in giving practitioners confidence in the processes and procedures.

5. ***Are there additional practical considerations for registered tax practitioners relevant to the obligations in section 30 of the Determination that should be addressed in the guidance?***

   The proposed guidance should overtly state that the record keeping requirements of the Determination and the TASA should align with the requirements under the taxation law. Paragraph 79 infers this, but it should be overt.

TPB(I) D60/2024 Supervision, competency and quality management under the *Tax Agent Services Act 2009* (s35 and s40)

Broad comments on the draft information sheet

1. In addition to the guidance being informed by the APESB Standards, we note that significant parts of the draft guidance are reflected in existing guidance TPB(I) 36/2021. Coupled with the consistency with APESB Standards, this provides valuable familiarity as tax practitioners come to terms with the new obligations.
2. Footnote 16 needs updating to reflect the passage of the *Crimes and Other Legislation Amendment (Omnibus No. 1) Bill 2024*.
3. Footnote 33 appears to be bolded. We question whether this is intentional given that the same reference in TPB(I) 36/2021 is not bolded.
4. Footnote 41 has an opening bracket but does not have a closing bracket. This is the same issue in TPB(I) 36/2021 at footnote 25.

Consultation Questions

1. ***Do you have any general comments regarding the guidance on the obligation under section 35 of the Determination, contained within paragraphs 73 to 77 of this draft TPB(I)?***

   We note that significant parts of the draft guidance have been drawn from the currently existing guidance TPB(I) 36/2021. This provides valuable consistency as tax practitioners come to grips with the new obligations.

2. ***Do you have any general comments regarding the guidance on the obligation under section 40 of the Determination, contained within paragraphs 78 to 86 of this draft TPB(I)?***

   The extensive replication of the APESB Standards throughout the draft guidance, but particularly in paragraphs 78 to 86 as noted at paragraph 81, is welcomed as it provides certainty for tax practitioners would currently comply with those Standards, avoiding inconsistencies and uncertainty.

   As noted in paragraph 83, in addition to the APESB Standards, 'tax practitioners must ensure that their quality management systems are also consistent with the requirements of the TASA'. These additional obligations should be spelt out clearly in paragraph 83 (or appropriately referenced if an additional paragraph) where they are additional to the items listed in paragraph 84.

3. ***Do you consider the suggested internal controls outlined at paragraphs 79 and 80 of this draft TPB(I), in relation to quality management systems for large firms and individual tax practitioners respectively, to be adequate and appropriate? If no, please provide further detail including any additional suggestions of internal controls that should be included.***

   We consider the suggested internal controls in relation to quality management systems for large firms and individual tax practitioners respectively, are adequate and appropriate. As noted at paragraph 79, 'the extent of internal controls in place will differ significantly between tax practitioners'.

   This is an important point to be remembered and reflected in compliance undertakings such that the additional requirements under section 40 of the Determination do not place unfair burdens on smaller tax practitioners.

4. ***Are there additional case study scenarios that would assist registered tax practitioners in understanding how the obligations under sections 35 and 40 of the Determination apply practically? If so, what types of scenarios should be addressed?***

In addition to the case studies in the appendix, which we note are drawn from TPB(I) 36/2021, in relation to the supervisory obligations under subsection 35(2), we suggest that an example involving the offshoring of tax agent services and how appropriate supervision is maintained (or not), would be of benefit.

Also, regarding Example 4, we submit that a more detailed analysis of why the TPB is unlikely to be satisfied, similar to the analysis in Example 5, would be of benefit to users of the guidance.

TPB(I) D61/2024 Keeping your clients informed (s45)

Broad comments on the draft information sheet

We support the guidance proposed in TPB(I) D61/2024, in particular:

- Clarification that a 'prospective client' does not include individuals or entities making general enquires about a registered tax practitioner (para. 18)
- The updated TPB factsheet which includes disclosure of potential withdrawal or reporting consequences where the client fails to meet their obligations (para. 27)
- That the factsheet can be used to assist in informing clients of the rights, responsibilities, and obligations of the registered tax (para. 46)
- Clarification that legal advice protected by legal professional privilege is not required to be disclosed under section 45 (para. 34)

Consultation Questions

1. ***Do you have any general comments regarding the guidance on the requirement to advise all current and prospective clients of relevant matters under subsection 45(1) of the Determination?***

   It is appropriate that disclosure in the letter of engagement of the information required under subsection 45(1)(a) ~ (c) of the Determination (or by attaching the *Information for clients* factsheet to the letter of engagement), satisfies the tax practitioner's obligations under this subsection.

   This includes, but is not limited to, disclosing that in some cases the tax practitioner may be required to withdraw from the client engagement and notify the TPB or ATO of certain matters.

   Further guidance is required regarding the note following subsection 45(1)(e)(i) of the Determination. While paragraph 41 of the proposed guidance provides an example of an 'other matters' this is no substitute for a detailed list of the type included at subsection 45(1)(d). The guidance should provide a comprehensive list of 'other matters', or detailed guidance as to how tax practitioners can identify those 'other matters', which need to be advised to clients.

2. ***Do you have any general comments regarding the guidance on the manner, form and timeframe requirements under subsection 45(2) of the Determination?***

   The example in subsection 45(2) indicates that all three of the ways described to satisfy this subsection are required. However, it must be recognised that not all tax practitioners will be able to satisfy all three requirements. For instance, a tax practitioner may not have a website and therefore would be unable to satisfy '(a)' in the example.

3. ***Are there additional case study scenarios that would assist registered tax practitioners in understanding how the obligations under section 45 of the Determination apply practically? If so, what types of scenarios should be addressed?***

   We do not have any suggestions for further case studies.

4. ***Do you have any general comments regarding the TPB's factsheet titled Information for clients?***

   The *Information for clients* factsheet is comprehensive, well laid out, and easy for clients to read and understand. The provision of this factsheet by the TPB ensures consistent messaging by the tax practitioners that use it.

   As the fact sheet may be utilised by tax practitioners as part of their compliance with the Determination, any changes to the fact sheet, including the validity of the link to the TPB webpage on which it sits, must be well communicated to all tax agents and relevant professional bodies.